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ABSTRACT

A series of changes in intellectual property law over the last 30 years has made it more difficult for researchers, scientists, authors, and artists to cooperate and collaborate on critically important projects. At the same time, the advance of communications technologies, specifically the Internet, promises to foster an explosion in creativity, cooperation, and collaboration never before thought possible. This paper considers how new tools and strategies will enable content owners, whether authors or publishers, to control their works and retain the benefits provided. At the same time, users of these works are enabled to derive maximum value from pre-existing art and knowledge by building on these advances. (Author/AEF)

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The Open Source Movement, Publishing, and the Dissemination of Knowledge

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Summary

Content.... movies, music, books – it all falls under the rubric of "intellectual property". Indeed, this is only a subset of IP, but for our purposes it is a representative example. Here is the key issue to ponder: A series of changes in intellectual property law over the last 30 years has made it more difficult for researchers, scientists, authors, and artists to cooperate and collaborate on critically important projects. At the same time the advance of communications technologies, specifically the Internet, promises to foster an explosion in creativity, cooperation, and collaboration never before thought possible. How can the restrictive environment of today's intellectual property laws, often exemplified by copyright, co-exist with society's overarching interest in this burgeoning advancement? Remember, society's interest is both crassly commercial and sympathetically benevolent.

These interests reflect pretty grand, yet seemingly contradictory goals. This discussion considers how new tools and strategies will enable content owners, whether authors or publishers, to control their works and retain the benefits provided by "scratching the self-interest itch" that often provides primary motivation. At the same time users of these works are enabled to derive maximum value from pre-existing art and knowledge by building on these advances. They can, as Newton put it, "stand on the shoulders of giants".

Copyright: Yesterday, Today, and Tomorrow

What is copyright? How did it come into being? Quite simply, copyright began in the 16th century as a means for one group of printers to protect their printed works from being pirated by other printers. You see, that first group of printers had acquired permission from an "author" to reproduce a work, in this case, a book. Copyright was established as a protection for the work of that "permissioned" group of printers. In the United States, the genesis of copyright law is found in the Constitution, article 1, section 8, which states:

[The Congress shall have power] "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;"

The original period of copyright protection was 14 years with "privilege of renewal" for an additional 14 years. Over the years copyright term has been extended repeatedly as the "fair use" rights have been diminished. While a smaller and smaller group may have benefited, an ever increasingly larger group has suffered. That group can easily be described as "society as a whole".

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Copyright did not attempt to stop users from reselling a book, teaching from a book, quoting portions of the book, or using the book as the basis for satire or inspiration. Attempts to prevent a work like "The Wind Done Gone" from being published would have been laughed out of court. Today copyright lawyers would have you believe that it is almost no longer permissible to base any work on a prior work or on "that which has come before". For example, Walt Disney's practice of basing stories or characters on those that can be traced back to the Brothers Grimm (Snow White, for example) can now be interpreted as expressly prohibited. If we believe the lawyers, certain historical figures are, or will soon be, off limits to almost anyone creating works of art or fiction. Examples of this include Pocahontas and even Dr. Martin Luther King. This begs the question, "How does this benefit anybody"? Does Disney really have a claim to the Pocahontas legacy? Who owns the history of and the ideals personified by Dr. King?

Let me go out on a limb and predict that the pendulum has swung as far as it can on the issue of extending copyright regulations in favor of the big corporate content empires. There is a pending Supreme Court case called Eldred v. Ashcroft that is attempting to return a modicum of sanity to portions of the intellectual property arena. If not the Eldred case (www.eldred.cc) then some other, stronger case will likely begin to roll back these over-extended corporate rights. The crazy part about this entire scenario is that content companies like publishers, movie studios, and record companies ultimately have such significant prospects for gain. Fear of change, however, seems to keep them blinded to this new world of opportunity.

What does this actually mean to an industry like publishing? It means significantly less than many of the conglomerates fear. First of all, most publishers do not make any money on content that is over 90 years old. Most earn the vast majority of their revenues on content created in the last five years. Indeed, an ability to use their marketing and editorial engines to leverage an enhanced public domain would become a powerful tool in their business toolbox.

At any rate, it will serve to focus the concentration of the leaders of this industry on the recognition that they earn their money not by forcing their customers to buy their products, but by delivering such high value goods and services that customers are pleased to buy them.

The Future of the Internet and Why We Can't Count Out eBooks

Despite all the dire predictions for the Internet and how it would certainly fall prey to one evil monopoly or another, the future is going to look much like its recent past. It will continue its rapid growth in both access and speed. The Internet is becoming as ubiquitous as television. That will not stop. It is also well on its way towards becoming more ubiquitous than the telephone is today. For businesses like the publishing industry, the meaning of this ascent will either be terrifying or thrilling, depending on its state of readiness. Rapid change in technology is wonderful….especially if the real users of that technology think so.

Many of us, myself included, have had great fun pointing out fatal flaws with eBook technologies. This was even more fun given the fanfare that accompanied eBooks and their proponents. In direct opposition to the initial hoopla, one might now assume it is a given that the average pleasure reader will never read electronically displayed text. We are becoming convinced that humans prefer the tactile sense of holding an organic material like paper and the "always-on" convenience of the printed page.

Don't kid yourselves! The ridiculously creative, competitive, and wealthy technology sector prides itself on making its own technology offerings obsolete every 18 months or so. It may take them 20 more years than they predicted. However, they will get the technology application right. When that happens the electronic sharing and collaborative development of content will become more commonplace than email. The benefits, commercially and societally, will be astonishing.

Remember the paperless office predicted in the '70s? Well it is almost here, admittedly 30 years late, but for many firms it will soon be their reality. Remember the Apple Newton personal organizer of 1990? It failed spectacularly, only to reappear as the hugely successful Palm Pilot. This is a prime example of better engineering and better technology that was "based on what had come before".

Every eBook I've tried to read has been....how can I say this nicely....a challenge. What the heck, they've all been duds. It may take three years or it may take 20, but someday the eBook, or some of its progeny, will build the business that obsolesces the companies who currently make their living putting ink on dead trees.

As the Internet becomes more "everywhere, all the time", at even lower cost, most consumers will prefer to "read" or "experience" content electronically. All of us – business people, educators, and learners – better be ready or we will look like the proverbial buggy whip manufacturer, the horse and buggy driver, or the uncomfortable horse and buggy passenger when Henry Ford came along and put a Model "T" in every garage.

Future Partnerships between Authors, Publishers, and Consumers

How do all the players take those first small steps into this brave new world? There are a few "watch words"; let me suggest just a couple and then propose a couple of additional "rules". First, we should all consider the concept of trust. As in, "I trust you to do what you said you would....and what I said you could." This "one on one" relationship will become even more critical as technology advances. The "barter" relationship of the Open Source movement depends on this type of trust. Again, the opportunities for existing, large, commercial entities to benefit from their existing positions could be huge. All they have to do is secure (or retain) our trust. Second, we should all consider the benefits from the word "extend" – like "I extend to you the right to....(fill in the blank). Better yet, how about, "I extend to you the right to improve on my work."? Just don't forget to "cut me in" – monetarily or recognition-wise.

Here are two rules that I would suggest hold true for large commercial enterprises as well as research-oriented organizations and institutions:

1. Experiment, experiment, experiment. Many small inexpensive initiatives will beat a very large well-funded R&D project every time. Play to your strengths. In business and in education it is essential to partner with good partners. While this seems self-evident it is often simple truths such as these that are ignored. This is where an Open Source perspective comes in. The ability to benefit from your partner's work and experimentation is critical to moving forward both your initiatives and your partner's goals. As an aside, many of you may have been waiting for me to insist that "a key to the intellectual property business castle" can be had by giving away copyright-protected content (whether on your own or on your author's behalf). I hate to disappoint but that would seem like a clueless thing to do unless you can find good commercial reasons for doing so. Of course one reason to "give away" content is to receive something that you want in return – the barter analogy.

These reasons might include, for example, trying to build a readership of related materials that your enterprise sells, or trying to build a reputation of or a following for a particular author, artist, or project. In general, Open Sourcing (or giving away) previously copyright protected content may not earn you direct revenue but it certainly could serve to reduce marketing or other costs associated with development or generating revenue on related materials.

But this is somewhat of a digression. The real importance of Open Source is your selection of partners, especially technology partners. What Open Source can mean to you is that you actually gain control over the technology you will use to distribute content in this new world just described. This potentially puts one in the position of controlling how content can be used (from a publishing perspective, for example) while becoming unshackled from any dictates a particular technology provider might want to impose. Open Source strategies ultimately put those controls in the hands of the full range of users. Exploring this from an integrated technology and content perspective could lead to a content owner establishing relatively non-restrictive licenses on how the content can be used in other publications while imposing no restrictions with regard to delivery mechanisms.

Open Source software is simply a real, verifiable, and guaranteed commitment on the part of your technology supplier to treat you like a partner with regard to the use of that technology. This is critical because when technology is used to reach your customers, you or your organization retain control over customer access and you do not become a victim of that supplier.

2. Don't fear your customer. Your customers may not always be right, but they are always your customers. Your customers want a level of control, they need this control, and they will pay for control. This is especially true if you are a content provider. It can easily be deduced that the record industry, based on their public pronouncements, apparently must fear their customers. They are seemingly convinced that most of their

customers are crooks and draconian new laws are needed to protect this industry from these "customers". What a sad way to live you life! What a stupid way to serve your customers! You can treat customers badly for a while, sometimes even for years, but it always comes back to haunt you. Either the customers will find a way to avoid your product or service altogether (think using email rather than going to the post office), or they will migrate en mass to a new supplier who treats them like....well....customers (think Wal-Mart versus Kmart).

Don't let the public relations barrage from lawyers representing large "content conglomerates" fool you either. Extracting never-ending and ever increasing revenues on existing content libraries without offering similarly increasing benefits to customers just will not happen. Ok, it may happen for a few, well-developed consumer icons like a mouse with big ears....but for the rest of us....and them, the old rules still apply. Content businesses will make most of their revenues the old-fashioned way. They will earn them by providing better, more useful and valuable content to their customers than their competitors. Best of all, this can be provided in formats that make content more useful, accessible, and/or entertaining.

Try new things. Get close to your "consumer". Trust this brave new world and extend opportunities for others to enhance your work. As we move forward I hope that control of intellectual property remains in the hands of its owners and developers. However, I truly believe we all benefit if a full array of rights and permissions are granted so that others can build on the pre-existing base of knowledge. I think this will lead to more flexible, learner-centered customizations in the education arena. Best of all I feel that we all can benefit from the lower costs of an electronic delivery model and the added value of dynamic content.

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